

CHAPTER 249

GOVERNMENT - STATE

SENATE BILL 19-166

BY SENATOR(S) Fields and Gardner, Fenberg, Moreno;
also REPRESENTATIVE(S) Roberts, Arndt, Bockenfeld, Duran, Galindo, Hooton, Jackson, Jaquez Lewis, Kipp, Lontine, Melton,
Sirota, Snyder, Valdez A., Weissman, Becker.

AN ACT

CONCERNING THE P.O.S.T. BOARD REVOKING THE CERTIFICATION OF A PEACE OFFICER WHO IS FOUND TO HAVE MADE AN UNTRUTHFUL STATEMENT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-31-305, **add** (2.5) as follows:

24-31-305. Certification - issuance - renewal - revocation - rules - definition.

(2.5) (a) NOTWITHSTANDING THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION, THE P.O.S.T. BOARD SHALL REVOKE A CERTIFICATION ISSUED TO A PERSON PURSUANT TO SUBSECTION (1) OR (1.3) OF THIS SECTION OR SECTION 24-31-308 IF:

(I) THE LAW ENFORCEMENT AGENCY THAT EMPLOYS OR EMPLOYED THE CERTIFICATE HOLDER NOTIFIES THE P.O.S.T. BOARD THAT, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS; AND

(II) THE LAW ENFORCEMENT AGENCY CERTIFIES THAT:

(A) IT COMPLETED AN ADMINISTRATIVE PROCESS DEFINED BY A PUBLISHED POLICY OF THE LAW ENFORCEMENT AGENCY, WHICH POLICY WAS IN EFFECT AT THE TIME THAT THE ALLEGED UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWING OMISSION OF MATERIAL FACT OCCURRED;

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

(B) THROUGH THAT ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, THE LAW ENFORCEMENT AGENCY DETERMINED BY A CLEAR AND CONVINCING STANDARD OF THE EVIDENCE THAT, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR COMPARABLE ADMINISTRATIVE INVESTIGATION; AND

(C) THE CERTIFICATE HOLDER HAS ELECTED NOT TO EXERCISE, OR HAS EXHAUSTED, THE INTERNAL DISCIPLINARY APPEAL RIGHTS PROVIDED BY THE OFFICER'S EMPLOYER; AND

(III) THE CERTIFICATE HOLDER, AFTER RECEIVING THE NOTICE FROM THE P.O.S.T. BOARD DESCRIBED IN SUBSECTION (2.5)(e) OF THIS SECTION, EITHER DOES NOT REQUEST A HEARING, OR REQUESTS A HEARING AND THE HEARING OFFICER HAS DETERMINED, AFTER CONDUCTING THE HEARING PURSUANT TO THE RULES OF THE P.O.S.T. BOARD AND IN COMPLIANCE WITH SECTIONS 24-4-104 AND 24-4-105, THAT THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS.

(b) A LAW ENFORCEMENT AGENCY THAT MAKES A DETERMINATION DESCRIBED IN SUBSECTION (2.5)(a)(II) OF THIS SECTION SHALL REPORT SUCH FACT TO THE P.O.S.T. BOARD ON A FORM THAT IS PRESCRIBED BY THE P.O.S.T. BOARD. THE FORM MUST REQUIRE THE OFFICIAL SUBMITTING THE FORM TO ATTEST, UNDER PENALTY OF PERJURY, THAT, TO THE BEST OF THE OFFICIAL'S KNOWLEDGE AND BELIEF, THE STATEMENTS ON THE FORM ARE TRUE, CORRECT, AND COMPLETE, AND THAT ANY FALSE STATEMENT, MISSTATEMENT, OR INACCURACY MAY RESULT IN REVOCATION OF THE OFFICIAL'S CERTIFICATION AS WELL AS CRIMINAL PROSECUTION.

(c) IF A CERTIFICATE HOLDER WHO IS THE SUBJECT OF AN INVESTIGATION DESCRIBED IN SUBSECTION (2.5)(a)(II) OF THIS SECTION RESIGNS OR REFUSES TO COOPERATE IN THE INVESTIGATION, THE INVESTIGATING LAW ENFORCEMENT AGENCY SHALL COMPLETE THE INVESTIGATION WITH OR WITHOUT THE SUBJECT'S PARTICIPATION. IF THE RESULTS OF THE INVESTIGATION DEMONSTRATE BY A CLEAR AND CONVINCING STANDARD OF THE EVIDENCE THAT, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE P.O.S.T. BOARD AND REQUEST REVOCATION OF THE CERTIFICATE HOLDER'S CERTIFICATION ON A FORM PRESCRIBED BY THE P.O.S.T. BOARD.

(d) THE RECORDS OF ANY LAW ENFORCEMENT AGENCY THAT ARE SUBMITTED FOR REVIEW BY THE P.O.S.T. BOARD FOR THE PURPOSES OF THIS SUBSECTION (2.5) REMAIN THE PROPERTY OF THE REPORTING LAW ENFORCEMENT AGENCY AND ARE NOT SUBJECT TO PUBLIC RELEASE BY THE P.O.S.T. BOARD.

(e) UPON RECEIPT OF THE FORM FROM A LAW ENFORCEMENT AGENCY PURSUANT TO SUBSECTION (2.5)(b) OF THIS SECTION, THE P.O.S.T. BOARD SHALL NOTIFY THE CERTIFICATE HOLDER OF THE CERTIFICATE HOLDER'S RIGHT TO REQUEST A SHOW CAUSE HEARING PURSUANT TO THE RULES OF THE P.O.S.T. BOARD AND IN COMPLIANCE WITH SECTIONS 24-4-104 AND 24-4-105.

(f) A PERSON WHO HAS HAD HIS OR HER P.O.S.T. CERTIFICATION REVOKED PURSUANT TO THIS SUBSECTION (2.5) MAY APPEAL THE DECISION TO THE FULL P.O.S.T. BOARD PURSUANT TO THE RULES OF THE P.O.S.T. BOARD AND SECTION 24-4-105, AND MAY SEEK JUDICIAL REVIEW PURSUANT TO THE PROVISIONS OF SECTION 24-4-106.

(g) IF A CERTIFICATE HOLDER'S CERTIFICATE IS REVOKED PURSUANT TO THIS SECTION AND A COURT OF RECORD SUBSEQUENTLY REVERSES OR VACATES THE FINDING THAT, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, THE CERTIFICATE HOLDER MAY REQUEST REINSTATEMENT OF HIS OR HER CERTIFICATE BY PROVIDING DOCUMENTATION OF THE COURT'S RULING TO THE P.O.S.T. BOARD WITHIN FORTY-FIVE DAYS AFTER THE COURT'S RULING.

(h) IF A LAW ENFORCEMENT AGENCY IS NOTIFIED THAT A PEACE OFFICER WHO IS EMPLOYED OR WHO WAS EMPLOYED BY THE AGENCY IS ALLEGED TO HAVE KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE AGENCY EMPLOYING THE PEACE OFFICER, OR THE LAST LAW ENFORCEMENT AGENCY TO EMPLOY THE PEACE OFFICER, SHALL INVESTIGATE THE ALLEGATION UNLESS THE ACCUSED PEACE OFFICER HAS NOT BEEN EMPLOYED BY THE AGENCY FOR AT LEAST SIX MONTHS PRECEDING THE DATE UPON WHICH THE AGENCY IS NOTIFIED OF THE ALLEGATION, IN WHICH CASE THE AGENCY MAY INVESTIGATE THE ALLEGATION.

(i) NOTHING IN THIS SECTION PROHIBITS THE LAWFUL USE OF DECEPTION OR OMISSION OF FACTS BY A PEACE OFFICER WHILE HE OR SHE IS CONDUCTING AN INVESTIGATION OF CRIMINAL ACTIVITY.

(j) FOR THE PURPOSES OF THIS SUBSECTION (2.5), "ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS" MEANS AN EMPLOYER'S FORMAL PROCESS OF INTERNAL CONTROL THAT ASSURES THAT AN ALLEGATION OF VIOLATION OF EMPLOYER RULES, POLICY, PROCEDURE, OR OTHER MISCONDUCT OR IMPROPER ACTIONS BY AN EMPLOYEE ARE SUBJECT TO A COMPLETE AND OBJECTIVE INVESTIGATION RESULTING IN FINDINGS OF FACT AND DISCIPLINARY ACTION FOR ANY SUBSTANTIATED VIOLATION.

(k) THE P.O.S.T. BOARD MAY PROMULGATE RULES FOR THE IMPLEMENTATION OF THIS SUBSECTION (2.5).

SECTION 2. Appropriation. For the 2019-20 state fiscal year, \$40,056 is appropriated to the department of law. This appropriation is from the P.O.S.T. board cash fund created in section 24-31-303 (2)(b), C.R.S., and is based on an assumption that the department will require an additional 0.6 FTE. To implement this act, the department may use this appropriation for peace officers standards and training board support.

SECTION 3. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2020 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: May 22, 2019